

1 Leon Greenberg, NSB 8094
Dana Sniegocki, NSB 11715
2 Leon Greenberg Professional Corporation
2965 South Jones Boulevard, Ste. E-4
3 Las Vegas, Nevada 89146
Tel (702)383-6085
4 Fax (702)385-1827

5 Christian Gabroy, NSB 8805
Gabroy Law Offices
6 The District at Green Valley Ranch
170 S. Green Valley Pkwy, Ste 280
7 Henderson, NV 89012
Tel (702)259-7777
8 Fax (702)259-7704

9 Attorneys for Plaintiffs

10
11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**
13

14 FRANK COHN, Individually and on) **Case No.: 2:11-cv-1832-JCM-RJJ**
15 behalf of a class of all)
16 similarly situated persons,) **FIRST SUPPLEMENTAL COMPLAINT**
17 Plaintiff,)
18 v.)
19 RITZ TRANSPORTATION, INC., AWG)
20 AMBASSADOR, LLC, ALAN WAXLER,)
21 and RAYMOND CHENOWETH,)
22 Defendants.)

23
24 Now comes Plaintiff, for himself and all others similarly
25 situated, and alleges the following upon personal knowledge as
26 to himself and his own acts, and upon information and belief as
27 to all other matters:

28 **PARTIES AND PRELIMINARY STATEMENT**

1 1. The plaintiff, FRANK COHN, is a resident of Clark
2 County, Nevada, and a former employee of the defendants RITZ
3 TRANSPORTATION INC, and AWG AMBASSADOR, LLC.

4 2. The defendants, RITZ TRANSPORTATION, INC., and AWG
5 AMBASSADOR, LLC, ("the corporate defendants") are corporations
6 or limited liability companies existing and established pursuant
7 to the laws of the State of Nevada with their principal places
8 of business in the County of Clark, State of Nevada. The
9 defendants, ALAN WAXLER and RAYMOND CHENOWETH ("the individual
10 defendants") are the owners and/or managers of the corporate
11 defendants.

12 3. The acts complained of herein took place solely, or
13 primarily, in Clark County, Nevada.

14 4. The plaintiff has been an employee of the defendants
15 jointly for the purposes of the Fair Labor Standards Act
16 ("FLSA"), and of only the corporate defendants for the purposes
17 of Nevada's labor laws, during the time period pertinent to
18 this complaint, to wit, during a portion of the three years
19 immediately preceding the initiation of this action. The
20 plaintiff has performed labor and services in an occupation
21 that is subject to the provisions of the FLSA, to wit,
22 performing work as a driver of shuttle buses for defendants.
23 Defendants are employers subject to the provisions of the FLSA
24 in that they are engaged in commerce as defined by the FLSA
25 because they have gross revenue in excess of \$500,000 per year
26 and have or do use goods that have moved in commerce.

27 5. That all of the various violations of law that are
28 alleged herein were committed intentionally and/or willfully by

1 the defendants.

2 THE PROPOSED CLASS CLAIMS AND PARTIES

3 6. Pursuant to Section 16(b) of the FLSA, the individual
4 plaintiff brings this Complaint as a collective action (also
5 commonly referred to as an "opt-in" class), on behalf of himself
6 and all persons similarly situated, to wit a putative class of
7 shuttle bus drivers employed by the defendants solely in the
8 State of Nevada within three (3) years of the filing of this
9 Complaint until entry of judgment after trial, such shuttle bus
10 drivers having, on occasion, worked in excess of 40 hours per
11 week and not being compensated at time and one-half their
12 regular hourly rate for each hour worked in excess of 40 hours
13 per week as required by the FLSA and Nevada law.

14 6. In respect to the Nevada statutory claims set forth in
15 the Second and Third Claims for relief, the plaintiff brings
16 this action as a class action pursuant to Nev. R. Civ. P. 23 on
17 behalf of himself and a class of all similarly situated persons
18 employed by the corporate defendants in the State of Nevada.

19 7. Plaintiff also brings this action as a class action
20 under Nev. R. Civ. P. 23 for claims arising under Nevada's
21 common law, to wit, as against all defendants for tortious
22 interference with prospective economic advantage and conversion
23 and as against the corporate defendants for breach of contract
24 for damages sustained by members of the putative class as third
25 party beneficiaries of such breach of contract, such persons
26 having been the intended beneficiaries of a mandatory "service
27 charge" imposed upon defendants' customers by the defendants,
28 and such persons not receiving any, or an improper portion, of

1 such mandatory "service charge" with the defendants having
2 retained the entire or a portion of such mandatory "service
3 charge" for their own benefit. Such service charges were
4 described in written instruments and contracts between such
5 customers and the defendant as mandatory "service charges" and
6 had the plain and understood meaning to and were the property of
7 such customers that such "service charges" were for distribution
8 to the class members driving shuttle buses for which such
9 mandatory "service charges" were included in the price of the
10 transportation services sold by the defendant. In addition, or
11 alternatively, such mandatory "service charges" were paid by
12 such customers to defendant in lieu of the customary voluntary
13 gratuity such customers would have otherwise conferred upon the
14 plaintiff class members driving the shuttle buses for which such
15 mandatory "service charges" were included in the price of the
16 transportation services sold by the defendant.

17 8. Plaintiff is informed and believes, and based thereon
18 alleges that there are at least 100 putative class and
19 collective action members. The actual number of class and
20 collective action members is readily ascertainable by a review
21 of the defendants' records through appropriate discovery.

22 9. The number of class members is so numerous that
23 joinder is impracticable and would involve many individual
24 litigations. Disposition of these claims in a class and/or
25 collective action rather than in individual actions will benefit
26 the parties and the Court.

27 10. There is a well-defined community of interest in the
28 questions of law and fact affecting the class as a whole.

1 11. Proof of a common or single set of facts will establish
2 the right of each member of the class to recover. These common
3 questions of law and fact predominate over questions that affect
4 only individual class members. The individual plaintiff's
5 claims are typical of those of the class.

6 12. A class or collective action is superior to other
7 available methods for the fair and efficient adjudication of the
8 controversy. Due to the typicality of the class members'
9 claims, the interests of judicial economy will be best served by
10 adjudication of this lawsuit as a class action. This type of
11 case is uniquely well-suited for class or collective treatment
12 since the employers' practices were uniform and the burden is on
13 the employer to establish that its method for compensating the
14 class members complies with the requirements of the FLSA and
15 Nevada law.

16 13. The individual plaintiff will fairly and adequately
17 represent the interests of the class and has no interests that
18 conflict with or are antagonistic to the interests of the class.

19 14. The individual plaintiff and counsel are aware of
20 their fiduciary responsibilities to the class members and are
21 determined to diligently discharge those duties by vigorously
22 seeking the maximum possible recovery for the class.

23 15. There is no plain, speedy, or adequate remedy other
24 than by maintenance of this class action. The prosecution of
25 individual remedies by members of the class will tend to
26 establish inconsistent standards of conduct for the defendants
27 and result in the impairment of class members' rights and the
28 disposition of their interests through actions to which they

1 were not parties.

2 FACTUAL ALLEGATIONS UNDERLYING THE CLAIMS

3 16. The corporate defendants are in the business of
4 providing shuttle bus service to and from the Las Vegas airport,
5 Las Vegas hotels, Las Vegas conventions, and other events taking
6 place in Clark County, Nevada, the corporate defendants also
7 employing the plaintiff and the putative FLSA collective and
8 Nev. R. Civ. P. 23 class members in connection with their
9 providing of such services to their customers, such persons
10 employed by the defendants typically being called "shuttle bus
11 drivers," or "drivers."

12 17. The individual defendants are the directors, owners,
13 officers and/or active managers of the corporate defendants and
14 have complete control over the corporate defendants and have the
15 authority and duty to make the corporate defendants' policies
16 comply with the FLSA and have acted as an employer for the
17 purposes of the FLSA violations alleged herein in that such
18 individual defendants have acted as agents of an employer
19 knowing of the policies of the corporate defendants alleged
20 herein that have violated the FLSA and/or by ordering, creating,
21 implementing, enforcing, and/or otherwise allowing and directing
22 such policies continue despite having the authority to prevent
23 such policies which violated the FLSA from taking place and
24 despite actual or constructive knowledge that such policies were
25 violating the FLSA and/or by failing to act to prevent or remedy
26 such policies violating the FLSA in a wanton and willful
27 disregard of the FLSA's requirements which the individual
28 defendants were charged with knowing and complying with as a

1 matter of law.

2 18. The compensation system used by the defendants for the
3 plaintiff and those similarly situated was "straight time no
4 overtime" system, meaning such employees were being paid a set
5 hourly amount for each hour they worked, the plaintiffs not
6 being paid time and one-half their "regular hourly rate" for
7 work in excess of 40 hours a week as required by the FLSA and
8 Nevada law.

9 19. Defendants' violations of the FLSA were willful in
10 that defendants were aware they were required to pay the
11 plaintiff and members of the putative plaintiff class overtime
12 at a rate of one and one-half their regular hourly rate under
13 FLSA but failed to do so.

14 **AS AND FOR A FIRST CLAIM FOR RELIEF PURSUANT TO THE**
15 **FAIR LABOR STANDARDS ACT AGAINST ALL DEFENDANTS ON BEHALF OF**
16 **THE NAMED PLAINTIFF AND ALL OTHERS SIMILARLY SITUATED**

17 20. The named plaintiff brings this First Claim for Relief
18 pursuant to 29 U.S.C. § 216(b) against all defendants on behalf
19 of himself and all other similarly situated persons, if any, who
20 consent in writing to join this action.

21 21. Pursuant to the applicable provisions of the FLSA,
22 29 U.S.C. § 206 and § 207, the named plaintiff and those
23 similarly situated were entitled to an overtime hourly wage of
24 time and one-half their regular hourly wage for all hours worked
25 in excess of forty hours per week, the named plaintiff and those
26 similarly situated worked more than forty hours per week for the
27 defendants, and the defendants willfully failed to make said
28 overtime payments.

1 22. The named plaintiff on behalf of himself and all other
2 similarly situated persons who consent in writing to join this
3 action, seeks, on this First Claim for Relief, a judgment
4 against all defendants for unpaid overtime wages and additional
5 liquidated damages of 100% of any unpaid overtime wages, such
6 sums to be determined based upon an accounting of the hours
7 worked by, and wages actually paid to the named plaintiff and
8 any such other persons who consent to join this action, and the
9 plaintiff also seeks an award of attorney's fees, interest and
10 costs as provided for by the FLSA.

11 **AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT**
12 **TO NEVADA REVISED STATUTES § 608.018 AGAINST THE**
13 **CORPORATE DEFENDANTS ON BEHALF OF THE NAMED PLAINTIFF**
 AND ALL OTHERS SIMILARLY SITUATED

14 23. The individual plaintiff repeats the allegations
15 previously set forth as if each were separately and completely
16 set forth in this claim for relief.

17 24. The individual plaintiff brings this Second Claim for
18 Relief against the corporate defendants pursuant to NRS §
19 608.018 on behalf of himself and a class of all similarly
20 situated employees of the corporate defendants.

21 25. Pursuant to NRS § 608.018, the plaintiff and the
22 putative class members were entitled to the payment of wages at
23 time and one-half their normal hourly rate when they worked in
24 excess of 8 hours a day or 40 hours a week, and the plaintiffs
25 were not paid such required wages.

26 26. The individual plaintiff on behalf of himself and the
27 class members, seeks, on this Second Claim for Relief, a
28 judgment against the corporate defendants for overtime wages,

1 such sums to be determined based upon an accounting of the hours
2 worked by, and wages actually paid to, the plaintiff, and also
3 seeks an award of attorney's fees, interest and costs, as
4 provided for by Nevada Law.

5
6 **AS AND FOR A THIRD CLAIM FOR RELIEF PURSUANT TO**
7 **NEVADA REVISED STATUTES § 608.040 ON**
8 **BEHALF OF THE NAMED PLAINTIFF AND THE PUTATIVE CLASS**
9 **AGAINST THE CORPORATE DEFENDANT**

10 27. The individual plaintiff repeats the allegations
11 previously set forth as if each were separately and completely
12 set forth in this claim for relief.

13 28. The named plaintiff brings this Third Claim for Relief
14 against the corporate defendants pursuant to Nevada Revised
15 Statutes § 608.040 on behalf of himself and a class of all
16 similarly situated employees of the corporate defendants.

17 29. On or about September 20, 2011, the named plaintiff
18 was separated from his employment with the corporate defendants
19 and at the time of such discharge the named plaintiff was owed
20 unpaid wages by the corporate defendants.

21 30. The corporate defendants have failed and refused to
22 pay the named plaintiff and numerous members of the putative
23 plaintiff class their earned but unpaid wages, such conduct by
24 such defendant constituting a violation of Nevada Revised
25 Statutes § 608.020, or § 608.030 and giving the named plaintiff
26 and similarly situated members of the putative class of
27 plaintiffs a claim against the corporate defendants under Nevada
28 Revised Statutes § 608.040.

31. As a result of the foregoing, the plaintiff seeks a

1 judgment against the corporate defendants for the wages
2 prescribed by Nevada Revised Statutes § 608.040, to wit, for a
3 sum equal to up to thirty days wages, along with interest, costs
4 and attorney's fees, on behalf of himself and the members of the
5 putative plaintiff class.

6 **AS AND FOR A FOURTH CLAIM FOR RELIEF ON BEHALF**
7 **OF PLAINTIFFS FOR DAMAGES SUSTAINED**
8 **AS THIRD PARTY CONTRACT BENEFICIARIES**

9 32. The individual plaintiff repeats the allegations
10 previously set forth as if each were separately and completely
11 set forth in this claim for relief.

12 33. The corporate defendants entered into contracts with
13 their customers whereby their customers promised to pay
14 mandatory "service charges" in connection with the shuttle bus
15 service performed by the corporate defendants' drivers for such
16 customers.

17 34. The foregoing contracts entered into by the corporate
18 defendants and their customers were all memorialized and made
19 binding obligations between the same through written
20 instruments.

21 35. In entering into the foregoing contracts, wherein
22 their customers agreed to pay such mandatory "service charges,"
23 the corporate defendants made a promise, either express or
24 implied and understood to exist by their customers, that the
25 mandatory "service charges" paid by such customers were to be
26 paid solely to the plaintiff class members driving the shuttle
27 buses for which such mandatory "service charges" were included
28 in the price of the transportation services sold by the

1 defendant and no part of such mandatory "service charge" was to
2 be used by the corporate defendants for other purposes or was to
3 be paid by the corporate defendants to persons other than the
4 plaintiff class members who actually drove the shuttle buses
5 provided under the contracts which included such mandatory
6 "service charges" in the price charged by the defendant.

7 36. The corporate defendants knowing that their customers
8 believed they were making a promise to solely distribute to the
9 plaintiff class members driving the shuttle buses the mandatory
10 "service charges" paid by their customers, made no attempt to
11 advise their customers that no such promise was, in fact, being
12 made or kept by the corporate defendants and intentionally
13 allowed their customers to believe such promise was being made
14 and kept and intentionally concealed from their customers, and
15 refused to reveal to their customers, their involved employees,
16 or the public, that a portion of such mandatory "service
17 charges" were being used by the corporate defendants for other
18 purposes and/or being paid by the corporate defendants to
19 employees besides those plaintiff class members driving the
20 shuttle buses provided under the contracts which included such
21 mandatory "service charges" in the price charged by the
22 defendant.

23 37. The corporate defendants' customers reasonably relied
24 upon the corporate defendants' promise to their customers that
25 the mandatory "service charges" they paid to the corporate
26 defendants pursuant to their contracts with the corporate
27 defendants would be paid, and were being paid, to the plaintiff
28 class members driving the shuttle buses provided under the

1 contracts which included such mandatory "service charges" in the
2 price charged by the defendant without any portion of such
3 mandatory "service charge" being used by the corporate
4 defendants for other purposes and without any portion of such
5 mandatory "service charge" being distributed by the corporate
6 defendants to any persons other than the plaintiff class members
7 driving the shuttle buses provided under the contracts which
8 included such mandatory "service charges" in the price charged
9 by the defendant.

10 38. Plaintiffs were the intended and identified
11 beneficiaries of the aforesaid contracts set forth in written
12 instruments that were made by the corporate defendants with
13 their customers that the mandatory "service charges" being paid
14 to the corporate defendants by such customers would, in turn, be
15 paid in their entirety to the plaintiff class members driving
16 the shuttle buses provided under the contracts which included
17 such mandatory "service charges" in the price charged by the
18 defendants.

19 39. The corporate defendants breached their aforesaid
20 contracts with their customers that are described in paragraphs
21 33 through 38 by failing to pay the mandatory "service charges"
22 they collected from their customers in the fashion promised by
23 such contracts, to wit, the corporate defendants failed to pay
24 the full amount of each collected mandatory "service charge" to
25 the plaintiff class members driving the shuttle buses provided
26 under the contracts which included such mandatory "service
27 charges" in the price charged by the defendant.

28 40. Plaintiffs, as the intended third party contract

1 beneficiaries of the mandatory "service charges" to be paid by
2 the corporate defendants' customers pursuant to the contracts
3 described in paragraphs 33 through 38, have sustained damages as
4 a result of the corporate defendants' breach of their contracts
5 as described in paragraph 39, in that the plaintiffs have not
6 been paid by the corporate defendants the full amount of such
7 mandatory "service charges" they were entitled to receive as
8 such third party contract beneficiaries.

9 41. As a result of the foregoing, the individual plaintiff
10 seeks on behalf of himself, and the other plaintiffs similarly
11 situated, the payment from the corporate defendants to the
12 plaintiffs of the monies the corporate defendants failed to pay
13 to the plaintiffs that were owed to the plaintiffs as third
14 party contract beneficiaries, as alleged in this claim for
15 relief, together with an award of costs, interest and attorney's
16 fees.

17 **FIFTH CLAIM FOR RELIEF FOR WRONGFUL INTERFERENCE WITH**
18 **PROSPECTIVE ECONOMIC ADVANTAGE**

19 42. The individual plaintiff repeats the allegations
20 previously set forth as if each were separately and completely
21 set forth in this claim for relief.

22 43. The individual and corporate defendants charge
23 customers with whom it contracts to provide shuttle bus services
24 a mandatory "service charge" calculated as a percentage of the
25 amount otherwise charged to the customer for the shuttle bus
26 services performed by the plaintiff and members of the putative
27 plaintiff class, or calculates such service charge on some other
28 basis. Defendants' customers paying the mandatory "service

1 charge" assume that the entirety of such mandatory "service
2 charge" is being distributed, in full, to the plaintiff class
3 members driving the shuttle buses provided under the contracts
4 which included such mandatory "service charges" in the price
5 charged by the defendants.

6 44. Defendants retain a portion of each mandatory "service
7 charge" collected from their customers and described in
8 paragraph 43 and do not pay such amount of service charges to
9 the plaintiff class members driving the shuttle buses provided
10 under the contracts which included such mandatory "service
11 charges" in the price charged by the defendant, but this fact is
12 neither disclosed to defendants' customers nor to plaintiffs.

13 45. A prospective contractual or other advantageous
14 economic relationship between plaintiffs and the defendants'
15 customers existed because it is the custom for such customers
16 when receiving shuttle bus services to voluntarily pay a tip or
17 gratuity to the drivers of such shuttle busses, and it is also
18 the custom that in lieu of paying such a voluntary gratuity,
19 such customer will pay a designated mandatory "service charge"
20 that will in turn be paid, in full, to the drivers actually
21 driving the shuttle buses provided under the contracts which
22 included such mandatory "service charges" in the price charged
23 by the defendants.

24 46. The defendants were aware of the foregoing prospective
25 contractual and/or economically advantageous relationship
26 between the plaintiffs and the defendants' customers because
27 they are experienced in the shuttle bus business and know that
28 the aforesaid alleged tipping practice and mandatory "service

1 charge" distribution practices alleged in paragraph 45 are
2 customary.

3 47. The defendants wrongfully and tortiously interfered
4 with the plaintiffs' prospective economically advantageous
5 relationship with defendants' customers by falsely representing
6 to their customers that an included mandatory "service charge"
7 was to be distributed in full among the plaintiffs driving the
8 shuttle buses provided by the defendants under the contracts
9 which imposed such mandatory "service charge"; by falsely
10 representing to their customers that such mandatory "service
11 charge" was in lieu of a gratuity when such mandatory "service
12 charge" was not fully distributed to the plaintiffs driving the
13 shuttle buses provided under the contracts upon which defendants
14 imposed such mandatory "service charge"; and as a result of such
15 false representations discouraged voluntary tipping or gratuity
16 giving by defendants' customers to such plaintiffs because each
17 such mandatory "service charge" was understood by defendants'
18 customers as being paid by them in lieu of the voluntary and
19 customary gratuity that they would otherwise bestow upon such
20 plaintiffs.

21 48. Defendants intended to harm plaintiffs by preventing
22 an economically advantageous relationship between the plaintiffs
23 and the defendants' customers from forming or by appropriating
24 to the defendants the prospective economic advantage and
25 opportunity possessed by the plaintiffs in relation to the
26 defendants' customers in that the defendants were substantially
27 certain that falsely representing that an included mandatory
28 "service charge" in the cost of purchased shuttle bus service

1 would be distributed in its entirety among the plaintiffs
2 driving the shuttle buses provided as a result of such purchase
3 of transportation services would, by dissuading voluntary
4 tipping by their customers to such plaintiffs, result in an
5 interference with a relationship between plaintiffs and
6 defendants' customers that was economically advantageous to the
7 plaintiffs.

8 49. Defendants can claim no privilege or justification for
9 falsely representing to their customers that an included
10 mandatory "service charge" was to be distributed in full among
11 the plaintiffs driving the shuttle buses for which such
12 mandatory "service charge" was imposed and by doing so they
13 discouraged voluntary tipping by their customers to such
14 employees.

15 50. Plaintiffs suffered actual harm as a result of
16 defendants' practice of falsely representing that an included
17 mandatory "service charge" would be distributed in full among
18 plaintiffs driving the shuttle buses for which such mandatory
19 "service charge" was imposed in that such plaintiffs did not
20 receive tips or gratuities from customers that they otherwise
21 would have received had the mandatory "service charge" not been
22 falsely represented by defendants as being distributed in full
23 to such plaintiffs.

24 51. Defendants' conduct in tortiously interfering with the
25 plaintiffs' prospective economically advantageous relations with
26 the defendants' customers, and the defendants' appropriation of
27 the plaintiffs' rightfully possessed and valuable economic
28 opportunity to receive tips or gratuities from such customers,

1 was malicious, in that defendants could have achieved their goal
2 of increasing their revenues from shuttle bus service sales by
3 simply increasing the amount they charged their customers for
4 shuttle bus services. Rather than directly increase their
5 shuttle bus service prices, they achieved the same increase in
6 revenue by requiring their customers pay a mandatory "service
7 charge," a portion or all of which defendants retained, such
8 mandatory "service charge" being understood by defendants'
9 customers to not be part of the price of the shuttle bus service
10 they were purchasing from the defendants but to be for the
11 plaintiff class members driving the shuttle buses provided under
12 the contracts which included such mandatory "service charges"
13 were in the price charged by the defendants, such mandatory
14 "service charge" being paid in lieu of a voluntary tip or
15 gratuity such customers would have otherwise freely given to
16 such plaintiffs.

17 52. The foregoing actions allegedly performed by the
18 defendants were intended to harm the plaintiffs and did harm
19 them.

20 53. As a result of the foregoing, the individual plaintiff
21 seeks on behalf of himself and the other similarly situated
22 members of the plaintiff class a judgment against the defendants
23 for the sums of money owed to such persons as a result of the
24 defendants' tortious interference with the plaintiffs'
25 prospective contractual or other economically advantageous
26 relations along with an award of punitive damages in excess of
27 ten thousand dollars (\$10,000.00) on behalf of each plaintiff,
28 along with interest, costs and attorney's fees.

SIXTH CAUSE OF ACTION FOR CONVERSION

54. The plaintiff repeats the allegations previously set forth as if each were separately and completely set forth herein.

55. The included mandatory "service charge" as part of defendants' customers' bills were falsely represented by defendants as a service charge to be distributed in full to the plaintiff class members driving the shuttle buses provided under the contracts which included such mandatory "service charges" in the price of the transportation services sold by the defendant.

56. Upon paying this service charge, it was the intent and understanding of the defendants' customers paying the same that the service charge money they had paid belonged to the plaintiff and the putative plaintiff class members and was the property of the such class members and defendants, through either active concealment or silence, represented this to be true.

57. The defendants' relationship to the mandatory "service charge" funds that their customers intended for, and gave to, the plaintiff shuttle bus drivers was that of bailee or custodian lacking any legal right to retain any portion of the mandatory "service charge" funds for themselves, as such charges were represented by defendants, either expressly or as a matter of law by defendants' failure to advise their customers otherwise, as being fully distributed by defendants to the plaintiff class members driving the shuttle buses provided under the contracts which included such mandatory "service charges" in the price of the transportation services sold by the defendant.

58. By retaining all or a portion of the service charge

1 money for itself, defendants have converted funds rightfully
2 belonging to the plaintiff and the class members and willfully
3 failed and refused to deliver such funds to the plaintiff and
4 the class members, defendants' failure to do so being
5 intentional and constituting an act of conversion in that the
6 defendants intended to permanently deprive the plaintiff and the
7 class members of such monies.

8 59. As a result of the foregoing, the individual plaintiff
9 seeks on behalf of himself and the numerous other similarly
10 situated members of the plaintiff class a judgment against the
11 defendants for the sums of money owed, but not paid, to the
12 class members as a result of the defendants' conversion along
13 with an award of punitive damages in the amount of ten thousand
14 dollars (\$10,000.00) to the class, along with interest, costs
15 and attorney's fees.

16 **SEVENTH CAUSE OF ACTION FOR RELIEF UNDER 29 U.S.C. § 215 OF THE**
17 **FAIR LABOR STANDARDS ACT AGAINST ALL DEFENDANTS EXCEPT THE**
INDIVIDUAL DEFENDANTS ON BEHALF OF PLAINTIFF COHN ONLY

18 60. Pursuant to 29 U.S.C. § 215(a)(3) it is a violation of
19 the Fair Labor Standards Act for any person to discriminate or
20 retaliate against any employee who files a complaint or
21 institutes or caused to be instituted any proceeding under the
22 Fair Labor Standards Act.

23 61. Pursuant to 29 U.S.C. § 216(b) any employer who violates
24 the provisions of 29 U.S.C. § 215(a)(3) shall be subjected to
25 such legal and equitable relief as is appropriate.

26 62. The defendants have violated 29 U.S.C. § 215(a)(3) by
27 initiating a counterclaim against plaintiff, FRANK COHN,
28 subsequent to the filing current action, such violation being

1 established by the following facts, among others:

2 (a) Defendants filed a counterclaim against plaintiff,
3 FRANK COHN, for Breach of the Duty of Loyalty and alleged
4 property damages, subsequent to plaintiff COHN filing the
5 instant action against the defendants;

6 (b) Defendants did not attempt to file a claim against
7 FRANK COHN for Breach of the Duty of Loyalty and alleged
8 property damages prior to the initiation of this lawsuit,
9 despite the fact that FRANK COHN has been separated from his
10 employment with defendants since September 20, 2011.

11 63. Plaintiff, FRANK COHN, has been injured by the
12 defendants' violations of 29 U.S.C. § 215(a)(3) in that he was
13 required to vigorously contest the counterclaim brought against
14 him that, but for his initiation of this litigation, would not
15 have been so brought.

16 64. Pursuant to the foregoing, the plaintiff, FRANK COHN,
17 seeks an award against all defendants of actual damages,
18 liquidated damages, costs, interest and attorneys fees, and
19 punitive damages in amounts sufficient to punish and deter the
20 defendants' conduct and violation of 29 U.S.C. § 215(a)(3),
21 along with appropriate equitable relief under the Fair Labor
22 Standards Act and such other relief as the Court deems just and
23 proper.

24 PRAYER FOR RELIEF

25 WHEREFORE, the plaintiff demands judgment against
26 defendants as hereinafter set forth, including, *inter alia*:

27 (a) Declare this action to be maintainable as a class action
28 on behalf of the proposed class of plaintiffs as per

Nev. R. Civ. P. 23;

(b) Grant Plaintiffs the relief requested on each claim for relief set forth herein;

(c) Award Plaintiff and Plaintiff class members their costs and disbursements of this suit, including without limitation, reasonable attorneys', accountants' and experts' fees;

(d) Grant Plaintiff and the Plaintiff class members such other and further relief as the Court may deem just and proper.

(e) Grant individual relief for plaintiff, FRANK COHN, as specified in plaintiff's Seventh Claim for Relief and as requested therein.

Plaintiff further demands a trial by jury on all issues so triable.

Dated: April 19, 2012

Submitted by the attorneys for the
Plaintiffs
Leon Greenberg Professional Corporation

/s/ Leon Greenberg

By: _____

Leon Greenberg, Esq.
Nevada Bar No.: 8094
2965 South Jones Boulevard - Suite E4
Las Vegas, Nevada 89146
Tel (702) 383-6085
Fax (702) 385-1827
leongreenberg@overtimelaw.com